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REMARKS

Claims 1, 3, 6, 8-11 and 34-60 are currently pending. Claims 38-60 are withdrawn. By the present communication claim 3 has been canceled without prejudice to pursuing the subject matter of the claim in one or more applications claiming priority to the above-captioned application. Following entry of the amendments claims 1, 6, 8-11 and 34-37 will be under examination.

Claims 1 and 6 have been amended. Support for the amendments to claim 1 can be found in the specification, for example, at page 9, lines 21-23 and page 17, lines 26-30. Support for the amendment to claim 6 can be found in the specification, for example, at page 19, lines 3-7 and page 19, lines 30-31. Accordingly, the amendments do not raise any issues of new matter. Furthermore, Applicants respectfully submit that entry of the amendments after final is proper because the amendments cancel claims, place the claims into condition for allowance or in better form for consideration on appeal, and do not raise new issues for consideration in accordance with 37 C.F.R. 1.116 and MPEP 714.12 and 714.13. Therefore, entry of the amendments is respectfully requested.

Applicant would like to thank the Examiner for discussions held in telephone conversations on August 18, 2005 with Applicant's representative. The restriction of newly added claims 38-60 was discussed.

Restriction

Newly submitted claims 38-60 have been restricted as allegedly directed to an invention that is independent or distinct from the previously elected invention.

Applicant respectfully traverses the restriction. Claims 38-60 are process claims that are based on non-elected claims 12-33, which were previously cancelled. Claims 38-60 were added as dependents of claim 1, a product claim. Applicant presented claims 38-60 with a request that the claims be rejoined in accordance with MPEP § 821.04. Applicant understands from the Office Action mailed July 26, 2005 and the telephone conversations held with the Examiner on August 18, 2005 that the Office does not intend to rejoin claims 38-60 with the claims that are

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currently under examination until a product claim is found allowable. Applicant requests that claims 38-60 be rejoined at latest upon identification of an allowable product claim, and preferably sooner.

Rejections Under 35 U.S.C. § 102

Claims 1, 3, 6, 8-11 and 34-35 stand rejected under 35 USC § 102(b) as allegedly anticipated by US 6,237,410 (Walt et al.). In maintaining the rejection, the Office Action alleges that the microspheres and bundle in the Walt et al. array are considered to be the entire substrate as claimed such that the substrate of the Walt et al. array includes a microsphere layer and a bundle layer.

Applicants respectfully traverse the rejection. Nevertheless, in order to further prosecution of this application claim 1 has been amended to recite, *inter alia*, a substrate comprising a flat surface and an array of different biopolymer probes covalently attached to said flat surface. The substrate of Walt et al. does not include an array of different biopolymer probes covalently attached to a flat surface. Rather, as asserted in the Office Action the Walt et al. array has a microsphere layer and a bundle layer. The bundle layer includes wells and probes are covalently attached to microspheres within several of the wells (see column 11, lines 59-66 and column 16, line 66, through column 17, line 10). Because the surface of the Walt et al. array has wells and microspheres within several of the wells, it is not flat. Therefore, the claims as amended are novel over Walt et al. and withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 36-37 stand rejected under 35 USC § 103 as allegedly obvious over US 6,237,410 (Walt et al.) in view of US 5,955,379 (Lennox et al.). In making the rejection the Office Action asserts that Walt et al. fails to teach that the biopolymer probes comprise extrinsic labels. The Office Action alleges that it would have been obvious to modify the apparatus of Walt et al. to include displacement assays described in the Background section of the Lennox et al. patent.

Applicant respectfully traverses the rejection. As set forth above in response to the anticipation rejection Walt et al. does not describe an array of different biopolymer probes

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covalently attached to a flat surface. Applicant further submits that Walt et al. when taken alone or in combination with Lennox et al. does not teach or suggest the claimed probe composition. More specifically, the description of a displacement assay in the Background of Lennox et al. does not cure the deficiencies of Walt et al. because it does not describe an array of different biopolymer probes covalently attached to a flat surface nor does it suggest making or using such an array.

Furthermore, Walt et al. and Lennox et al. describe different apparatuses for which there is no suggestion to combine in a way to arrive at Applicant's claimed invention. Specifically, Walt et al. describes an array having probe-bearing microspheres that can be fixed in wells using a dilute solution of Nafion or other polymer (see column 17, line 47, through column 18, line 2). In contrast, Lennox et al. describes a biosensor having a monolayer of hydrocarbon chains (see column 3, lines 12-21). Nowhere in the art of record is there a suggestion to modify either apparatus to use a stabilization polymer layer with an array that, instead of having probe-bearing microspheres in wells, has different biopolymer probes covalently attached to a flat surface. Therefore, Walt et al. taken alone or in combination with Lennox et al. does not teach or suggest the claimed invention. Accordingly, the claims as amended are not obvious over Walt et al. in view of Lennox et al. and withdrawal of the rejection is respectfully requested.

CONCLUSION

In light of the Amendments and Remarks herein, Applicant submits that the claims are in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent should there be any questions.

Respectfully submitted,


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